



September 19, 2022
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San Francisco Police Commission

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Re: SFPD Draft General Order 9.01 Traffic Enforcement & Curtailing the Use of Pretext Stops

In connection with the above captioned matter, we write (1) *substantively*, to oppose the adoption in its present form of this SFPD Draft General Order that would bar officers from stopping or citing persons for violating numerous California motor vehicle laws and San Francisco codes; and (2) *procedurally*, to urge the Commission itself, not a proxy, to hold public hearings *en banc* throughout the city with adequate prior public notice if and when any draft order is ripe for Police Commission consideration; in which case the Commission should post on-line the draft and all evidence collected both pro and con, as well as a memorandum that explains the purpose of the proposal, the alternatives considered, and the likely effects on public safety and police department morale.

Statement of Interest

Corbett Heights Neighbors (CHN) is an 18 year old neighborhood organization in the Corona Heights section of the city. We seek to maintain and enhance the quality of our neighborhood. <https://www.corbettneighbors.com>

Substantively, There is No Basis to Abrogate More than a Dozen Traffic Laws.

Of course, we oppose and condemn biased policing (as defined in the draft General Order) and we acknowledge that SFPD license plate stops have been reported to be vastly higher for black drivers than whites.¹ And we also acknowledge that city-wide per capita police stops (not just traffic related) for blacks are disproportionately high.² Biased policing has no place in San Francisco; and of course *any* police stop can pose a physical risk to officer and citizen alike.

At the same time, we believe that laws should be enforced; and we see no compelling reason to exempt more than a dozen traffic laws enumerated in the Draft Order, all of which were duly enacted for the purpose of enhancing public safety and welfare. Truly, this is an astonishing list: e.g. failure to signal while turning (unless the failure substantially increases the likelihood of injury or death); most otherwise illegal U-turns from the far left lane; any parking infraction if the car is occupied; a host of violations associated with failure to display registration tags or plates; malfunctioning lights unless after dark; and riding bikes or non-motorized scooters on sidewalks.³ Notably, this particularized “no enforcement” list goes well beyond a ban on pre-textual stops. Should it make its way to the Police Commission for formal action, CHN would oppose draft General Order 9.01.

The purpose of the draft General Order is “...to reduce racial bias in the enforcement of our traffic laws.” 9.01.01. But may we start with first principles: if the problem is bias in making stops or issuing citations, one might have thought that the first and most obvious remedy is more officer training and accountability, not elimination of officers’ authority to enforce the law. We would support such additional training if it is necessary. If housing inspectors or fire marshals were abusing their authority or acting contrary to policy, would we think the remedy is to toss the fire and housing codes into the Big Belly trash bin — to the serious detriment of public health and safety at large — rather than improving training and holding accountable the inspectors and fire marshals? To ask the question is to answer it.

¹See SFPD Stops Policy Public Advisory Group, p. 5. Session 2 Police Commission Powerpoint Presentation, August 25, 2022 accessible here: <https://sf.gov/resource/2022/departments-general-orders-under-submission>

² San Francisco Police Department Quarterly Activity and Data Report Quarter I 2022, p. 54, accessible here: <https://www.sanfranciscopolice.org/your-sfpd/published-reports/quarterly-activity-data-report-qadr> Hereafter: Police Activity Report.

³ San Francisco Police Department Draft General Order, Traffic Enforcement & Curtailing the Use of Pretext Stops, at Sec. 9.01.04 Limiting Stops for Low-Level Offenses. https://sf.gov/sites/default/files/2022-05/DGO%209.01_DRAFT_05.06.22_v2.pdf There are limited exceptions to the stop or detain prohibition. See Sec. 9.01.04(C)

Nowhere in the public record on this Draft have we seen a discussion of the likely effect on public safety or police department morale, the latter surely related to the former.

Regarding public safety, the most recent Police Department Quarterly Activity report notes that a whopping 54% of all City-wide stops were for traffic violations (41% for suspicion of criminal activity); and only 12% of all stops resulted in “no action.”⁴ It is well known that the City is not on track to meet its “Vision Zero” goal for traffic deaths; and in a paradox that has apparently eluded the advocates of this proposal, “Black/African American individuals are disproportionately impacted by traffic collisions resulting in fatality, representing 30% of people killed in traffic collisions despite representing only 5% of the city’s race/ethnicity demographic.”⁵ Seniors (aged 65 and above) and “people experiencing homelessness” are also disproportionately affected. *Ibid.* Just in the last 30 days, there were two serious traffic incidents within five blocks of each other in our neighborhood, one a fatality, the other a pedestrian injury. What are the likely knock-on effects, in addition to fatalities, when a baker’s dozen of motor vehicle violations are neutered? When, for example, an occupied car can park illegally (in front of a fire hydrant or an emergency MUNI exit?), turn signals become mostly optional, and automobile lights need not function in the fog.

We hope that police department morale is something about which the Police Commission is concerned. None of us is a police officer but we cannot help speculating that moving more than a dozen motor vehicle infractions (bicycle and non-motorized scooter as well) to the “never mind” list is detrimental to morale, retention, and recruitment. Naively, we had assumed until a few days ago that SFPD was down “only” 250 officers, but a September 14 report from ABC7 News quotes Chief Scott as saying that the Department is short 525 officers, and that many more might depart this year.⁶ What would this do for public safety?

In its present form, the logic of the Draft Order is wanting and the implications for public safety generally and the SFPD specifically seem not to be taken seriously; worse, the Draft is utterly heedless of context. Particularly since the pandemic, San Francisco’s reputation is of a declining, even failed city.⁷ Drugs, homelessness, tents, population decline, empty downtown office buildings, mentally distressed persons roaming the streets, brazen shoplifting, widespread theft of catalytic converters (just recently from

⁴ Police Activity Report, p. 82. The same Report, at p. 105, notes the filing of only one bias complaint.

⁵ Vision Zero Traffic Fatalities 2021 End of Year Report, May 2022. <https://www.visionzerosf.org/wp-content/uploads/2022/06/Vision-Zero-2021-End-of-Year-Traffic-Fatality-Report-FINAL-PUBLIC-1.pdf> at p. 6.

⁶ <https://abc7news.com/sf-crime-police-staffing-car-break-ins/12230630/>

⁷ <https://www.theatlantic.com/ideas/archive/2022/06/how-san-francisco-became-failed-city/661199/>

four police vehicles); that's the tableau. The public's perception is that law enforcement generally is *laissez faire*, traffic enforcement an after-thought⁸.

Perhaps for all of these reasons, the voters of San Francisco, by a margin of 55% to 45%, voted to remove the previous District Attorney so that the criminal justice system in our City could be altered significantly. Additionally, just a few days ago the San Francisco Chronicle's survey of 1653 City residents revealed how wide and deep is the distress in the community: 45% having experienced theft in the last 5 years, 65% think that life here is worse than it was when they moved here, and exceptionally low ratings were awarded for virtually all government entities.⁹ On top of all this, we know that the present District Attorney has stated publicly that she opposes a ban on all pre-textual stops.

In sum, the sweeping terms of the Draft Order — particularly the baker's dozen of neutered motor vehicle code provisions — are alien to the Order's stated purpose, which itself could be realized through means less detrimental to public health and safety as well as Police Department morale. Furthermore, to entertain this order is to hurtle even faster down a path that has already led to overwhelming public disapproval of the criminal justice system and widespread disenchantment with conditions in the City as well as its elected and appointed officials.¹⁰

The Incomplete Process Being Used to Draft and Take Comment on the Draft Traffic Enforcement General Order

As the Police Commission well knows, to date the process for drafting and considering this General Order has been to delegate the drafting to a Working Group that has periodically met for months; and, more recently, to the San Francisco Human Rights Commission (HRC) for "listening sessions" on public interactions with the police. To us, this seems almost deterministic and not a fair way to solicit public input. The general public cannot realistically be expected to attend the sausage making of the Working Group; and it seems incomplete to have the HRC be the main forum for public comment given that it has no authority over, or responsibility for, public safety or police department morale. Listening sessions to hear of interactions with the police within the domain of the SFHRC, of course; beyond that, no. A General Order adopted solely

⁸ <https://www.sfchronicle.com/sf/bayarea/heatherknight/article/sfpd-traffic-tickets-17355651.php>

⁹ See in general the September 13, 2022 Chronicle Article, "New SF Chronicle Poll Finds Pervasive Gloom." <https://www.sfchronicle.com/sf/article/sfnext-poll-sentiment-17435794.php>

¹⁰ We think the Chronicle editorial board had it mostly right as it summed up the results of the survey cited in footnote 9: "There is no doubt this city is simmering in organic, home-grown discontent - born of a deep and personal understanding of the shortcomings of public life and the failure of leadership to meaningfully improve conditions on the ground, particularly as it relates to homelessness, public safety, and housing." <https://www.sfchronicle.com/opinion/editorials/article/sfnext-poll-san-francisco-17442479.php> Abrogating more than a dozen motor vehicle laws would take us in precisely the wrong direction.

pursuant to these procedures would be barren of any moral authority in the eyes of the general public; would reflect a cavalier approach to fashioning Orders with important public policy and safety implications; and, for these reasons, would tarnish the reputation of this Commission as well as the Mayor and Board of Supervisors who appointed or confirmed you.

Accordingly, in order to ensure that there will be a transparent, open, and fair process for the consideration *by the public at large* of a Draft Traffic Enforcement General Order in the event one becomes ripe for Commission review and public comment, we respectfully request:

- That you adopt a resolution that sets forth now what those additional hearing procedures will be once a Final Draft is prepared.
- That at such time as a Final Draft is ripe for full public review, you publish that Draft on your website along with a supporting memorandum that clearly describes the purposes of the policy changes and the reasons therefor; the alternatives considered that would not bar officers from issuing citations or making arrests in connection with the itemized list of traffic infractions; the evidence collected, pro and con; and the likely effects of the policy changes on public health and safety as well as police department morale.
- That at least 45 days advance notice be provided for submission of written comments.
- And that, thereafter, the entire Commission, meeting *en banc* following receipt of written submissions, hold its own public hearings — its own “listening sessions” — throughout the City, i.e. in at least a handful of neighborhoods, on the text and implications of the Draft Order.

Thank you for considering our views.

Sincerely,
Paul Allen, Secretary
On Behalf of the Board of Directors
Corbett Heights Neighbors